IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2326 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B M SODHA - Petitioner(s)
Versus
CHIEF ENGINEER & 3 - Respondent(s)

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Appearance :
MRS MC THAKKER for Petitioner(s) : 1,
MRS VD NANAVATI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 05/10/2007

ORAL JUDGMENT

1. The petitioner under Article 226 of the Constitution of India has prayed for issuance of writ or mandamus or any other appropriate writ directing

the respondent authorities to treat the petitioner to have been promoted to the post of Superintendent Grade-II after he completed 20 years of service in the post of Sub Overseer and grant him all consequential benefits including deemed date of seniority, the arrears and difference in salary etc with admissible allowances.

2. The brief facts leading to filing of this petition needs to be narrated in order to appreciate the controversy in this matter:

2.1 The petitioner was appointed as Sub Overseer on 17.04.51 with Garrison Engineer, Jamnagar. The petitioner retired on attaining age of superannuation on 31.10.88. The petitioner completed 37 years of service as Sub Overseer and retired on the same post. The petitioner has relied upon the policy decision of the respondent dated 29.11.1966 whereunder it was decided to consider the non matriculate Sub Overseer and Charge Mechanics/Charge Electricians(REfring) who rendered minimum of 20 years of service in the department of which atleast 5 years of service int eh then existing grade for promotion to the post of Superintendent B/R E/M Grade II against 25% vacancy reserved for departmental promotions.

2.2 The petitioner is a non matriculate and he could not acquire the qualification of matriculation or above. However, he was nourishing solemn hope that under the policy of 29.11.66 he would be considered

for promotion as under the said policy even non matriculate sub overseer if had completed 20 years of service out of which 5 years of service in the same post were promoted against 25% of vacancy reserved for departmental promotion.

2.3 The petitioner completed 20 years of service on 17.04.71 as he was recruited on 17.04.51. Unfortunately, in the meanwhile the recruitment rules for the post of Superintendent came to be promulgated with effect from 07.04.70 wherein it was specifically provided as it is stated at the bar by learned counsel for the respondent and as it could be seen from the correspondence that the promotion was available only to those sub overseer who had acquired the qualification of matriculation or above. The petitioner admittedly was not qualified to be promoted as per the recruitment rules of 07.04.70 and therefore he was not promoted. It deserves to be noted at this stage that the in-charge, GE, Jamnagar did recommend the cases of all the sub overseer and other similarly situated employees who were left out on account of advent of recruitment rules with effect from 07.04.70 as it had caused heart burning and a sense of injustice amongst these employees. The recommendations, however, were not accepted by the Ministry and ultimately the petitioner had to retire on attaining the age of superannuation on 31.10.88. Thereafter the petitioner preferred this petition challenging non granting of promotion under the policy dated 29.11.66.

3. Ms Shree Vyas, learned advocate appearing for Ms M.C Thakker for the petitioner has submitted that the benefit which was admissible under policy dated 29.11.66 to the non matriculate sub overseer could have been extended to such sub overseer even after the recruitment rules, 1970 came into force as the non matriculate sub overseer and others who received benefit of policy dated 29.11.66 and the present petitioner were forming one homogeneous class and this class was treated unequally so that there is a clear breach of provisions of Article 14 of the Constitution of India. It was not open for the respondent to treat the employees equally or unequally only because of the advent of the recruitment rules, 1970.

3.1 The fact remains that the sub overseer and other similarly situated non matriculate personnel who got benefit of promotion to the post of Superintendent under the policy dated 29.11.66 were actually similarly situated qua the petitioner and therefore when everyone was forming one homogeneous class, the recruitment rules of 1970 cannot be held against them in denying them the chance of promotion which is otherwise contrary to the principles laid down in various decisions of the Apex Court that an employee should atleast get two promotions in his entire career which is a requirement of model employment. As it could be seen from the record even the GE, Jamnagar had recommended the case of the petitioner

and other similarly situated employee as there was a feeling of heart burning and sense of frustration among them.

4. Ms Nanavati, learned advocate appearing for the respondent has submitted that the policy decision of 29.11.66 was a benevolent gesture taken for assuaging the sense of frustration and that too it was not for all the posts but only for 25% of vacancies reserved for departmental promotions. All non matriculate sub overseer were not required to be promoted even under the policy dated 29.11.66. The only 25% vacancies earmarked for departmental candidates were required to be filled in by sub overseer who did not possess the qualification of being matriculate and therefore the petitioner cannot claim as a matter of right to be promoted under the policy because of advent of recruitment rules of 07.04.70. The said policy cannot be relied upon and Ms Nanavati makes a statement at bar that after coming into force of recruitment rules, 1970 not a single sub overseer having no qualification of matriculation is promoted to the post of Superintendent Grade-II.

4.1 She has submitted that it is unfortunate on the part of the petitioner that the recruitment rules came into force and even thereafter after a year he could complete 20 years of service. The petitioner cannot be said to have formed part of the homogeneous class as submitted by the learned counsel for the petitioner as the petitioner did not fulfill the

required criterion for being considered eligible for promotion to the post of Superintendent Grade-II as he had not completed 20 years of service before the recruitment rules came into force then only his case would have been considered for promotion to the post of Superintendent Grade-II.

5. This Court has heard learned counsel for the parties and perused the materials on record. This Court is unable to accept the submission of Ms Vyas, learned advocate for the petitioner as the petitioner admittedly did not possess the qualification prescribed under the recruitment rules 1970. The policy dated 29.11.66 cannot be pressed into service unless and until it is decided to implement in case of similarly situated overseer who could not receive the benefit under the policy. This is a subject matter of policy which is based upon sound principle of manning the posts by qualified personnel and therefore non continuing of the policy cannot be frowned upon by the Court when it is based upon sound principle of employment.

6. The submission with regard to the petitioner forming part of the homogeneous class is also bereft of any merits inasmuch as the petitioner did not possess the requisite qualification nor did he fulfill the eligible criteria laid down under the policy. The petitioner could complete 20 years of service only on 17.04.71 when the policy had already been lapsed as per the submission of learned counsel

for the respondent. The respondents were justified in denying promotion to the petitioner as he did not fulfill the qualification criteria laid down under the rules.

7. In the premises aforesaid, this petition is required to be dismissed and is accordingly dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

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